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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2005 MAR 11 P 12:35

U.S. DISTRICT COURT
DISTRICT OF MASS

Yance Calhoun
Appellant

V

United States of America
Appellee

CASE NO. 05-10358RWZ

93-10020

MOTION FOR LEAVE TO AMEND PURSUANT TO
RULE OF CIVIL PROCEDURE 15(a)

Comes now the Appellant Yance Calhoun pro se , and unskilled in the area of law request this Honorable Court to grant this motion to amend his pending petition based on a Newly Intervening Supreme Court ruling UNITED STATES V BOOKER 542 U.S.__(2005).

JURISDICTION

This Court has the authority to grant this motion pursuant to Federal Rules of Civil Procedure 15(a).

SUMMARY OF THE ARGUMENT

On February 22, 2005 the District Court filed the Appellant **28 U.S.C § 2255(3)** which is currently pending before this Court. The District Court has not ordered the government to respond to the Appellant allegations. The Appellant claims that his Sixth Amendment Right was violated when his sentence was enhanced under **2D1.1(b)(1)** by a judge instead of a jury.

This illegal enhancement pursuant to **U.S.S.G. § 2D1.1(b)(1)** raised the Appellant base offense level by **2 points** to base offense level **38**. Without the illegal **2 point** enhancement the Appellant base offense level would be level **36** minus **3 points** for acceptance of responsibility, a sentencing range of **151-188 months**.

Ultimately, the Appellant was sentenced to the **high end of 188 months**, to run concurrent with the other counts.

Just recently the Supreme Court handed down it's decision in **UNITED STATES V BOOKER 542 U.S.____(2005)** concluding that the **federal sentencing guidelines were unconstitutional in their entirety**.

The result is that the sentencing guidelines can still be utilized by the Court. However, they are no longer mandatory; instead, they are now advisory. Therefore the Appellant pray that this Honorable Court allow this decision on January 12, 2005 that **Blakely does applies to the federal sentencing guidelines** to be a part of the record in this instant case which is before the Court and grant this **motion to amend** in light of that ruling in **UNITED STATES V BOOKER 542 U.S. ____ (2005)**

PRAYER

Therefore in the interest of justice the Appellant pray that this Honorable Court will remove the **2 points** under **2D1.1** and resentence the Appellant to the **low end** of his guideline range without the enhancement.

RESPECTFULLY SUBMITTED


Yance Calhoun


CERTIFICATE OF SERVICE

I Yance Calhoun hereby declare under the penalty of perjury that I forwarded a copy of the foregoing motion to the United States Attorney S. Newhouse this 5th day of March 2005 to the address listed below for the purpose of service pursuant to 28 U.S.C § 1746.

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RESPECTFULLY SUBMITTED


Yance Calhoun